IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2028 OF 1996

Ms. Leela Sabhachandani of Bombay, Indian Inhabitant, residing at Flats 31/32, Dena Bank Building, Colaba, Bombay - 400 005. .. Petitioner

Versus

1. Union of India.

2. Estate Officer, Station Headquarters Colaba, Bombay - 400 05.

3. Administrative Commandant, Station Headquarters, Colaba, Bombay - 400 005. .. Respondents

ALONGWITH

CIVIL APPLICATION NO. 536 OF 2005
IN
WRIT PETITION NO. 2028 OF 1996

1. Union of India.

2. Estate Officer, Station Headquarters Colaba, Mumbai - 400 005.

3. Administrative Commandant, Station Headquarters, Colaba, Mumbai - 400 005. .. Petitioners (Ori.Respondents)

Versus

Miss Leela Sabhachandani, R/at Flat No.31/32, Dena Bank Building Colaba, Mumbai - 400 005. .. Respondents (Ori.Petitioner)

AND

CIVIL APPLICATION NO. 1471 OF 2006
IN
WRIT PETITION NO. 2028 OF 1996

Miss Leela Sabhachandani,

residing at Flat No.31/32, Dena Bank]
Building, Colaba, Mumbai - 400 005.] .. Petitionerr

Versus

1. Union of India.]

2. Estate Officer, Station Headquarters]
Colaba, Mumbai - 400 005.]

3. Administrative Commandant,]
Station Headquarters, Colaba,]
Mumbai - 400 005.] .. Respondents

And

Mrs. Sajani Sujan Ajwani,]
Age 68 years, Nee: Lajwanti H.]
Sabachandani, Ajwani Kutir,]
651/B, 17th Road, Khar, Mumbai-400 052.] .. Applicant

Mr. H.P. Vyas for the applicant in Civil Application No.1471 of 2006.

Mr. D.A. Dubey i/b Mr. S.S. Sarkar for respondents.

CORAM: R.M. LODHA &
A.S. BAGGA, JJ.

DATED: 13TH JUNE, 2006

ORAL JUDGMENT : [Per R.M. Lodha, J.]

. Miss Leela H. Sabhachandani (since deceased) suffered an order of eviction from the Estate Officer on 24th May, 1995 in respect of Flat Nos.31-32, Dena Bank Building, Colaba, Mumbai. She preferred an Appeal before the Principal Judge, City Civil Court against the

order of eviction. The Appeal was dismissed by order dated 22nd January, 1996. Aggrieved thereby, the present Writ Petition was filed. The petitioner Miss Leela Sabhachandani died on 20th July, 2004. Civil Application No.1471 of 2006 has been taken out by one Mrs. Sajani Sujan Ajwani praying for substitution as a legal representative of Miss Leela Sabhachandani. This application has been made on 5th June, 2006. Another application being Civil Application No.536 of 2005 has been taken out by respondents No.1 to 3 praying therein that Writ Petition be dismissed as abated.

2. Before we advert to the two applications, we may notice few brief facts. The premises being Flat No.31-32, Dena Bank Building, Colaba, Mumbai were hired by the Central Government somewhere in the year 1943 from the landlords for providing Government hired married accommodation. The petitioner's father was in Government service and he was allotted some premises by the Government. He died in the year 1958 and the petitioner continued to remain in occupation into the premises which were in occupation of her father prior to his death. In the year 1959, it was found that the petitioner was not entitled to continue her occupation in the premises which were allotted to her father prior to his death, being a Lower Division Clerk at that time.

The proceedings for eviction were initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against the petitioner and the eviction order came to be passed on 27th October, 1959. The petitioner challenged the said order of eviction in Appeal No.7 of 1959. In that Appeal some arrangement was arrived at between the parties and accordingly the petitioner was allotted the Government hired accommodation i.e. 31-32, Dena Bank Building, Colaba, Mumbai on 12th October, 1960. The petitioner being a spinster was not entitled to the Government hired married accommodation and accordingly, an offer was made to the petitioner for allotment of another quarter as she was Lower Division Clerk. The petitioner did not accept the offer and continued to remain in occupation. The petitioner was to retire from service on 1st August, 1994 and it is the case of the respondents that as per the Government policy, she was required to be shifted from Government hired accommodation to Government owned accommodation one year prior to her date of retirement and accordingly, on 5th July, 1993, an allotment letter was issued allotting the Government owned accommodation to the petitioner and the earlier allotment order dated 12th October, 1960 was cancelled. The petitioner did not vacate the premises being Flat 31-32, Dena Bank Building and did not shift to the Government owned

accommodation and consequently, the eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act was initiated against her and as noticed above, the eviction order came to be passed by the Estate Officer on 24th May, 1995 which was confirmed in Appeal on 22nd January, 1996.

3. The petitioner is dead. She was a spinster. Civil Application No.1471 of 2006 is made by her sister Mrs. Sajani Sujan Ajwani. That she is married and living separately with her family is apparent from the application itself. No right to sue can be said to survive to the applicant Mrs. Sajani Sujan Ajwani. The application is wholly misconceived. She cannot be permitted to be substituted in place of deceased Miss Leela Sabhachandani.

4. In the circumstances, the Writ Petition has to be dismissed as abated. Confronted with this difficulty, Mr. H.P. Vyas, the counsel for Mrs. Sajani Sujan Ajwani, after seeking instructions from the husband of the applicant, made twofold submission. He submitted that the applicant be permitted to remove the belongings and articles of the petitioner lying in the said flat as the lock has been put up by the respondents on the said flat. He also submitted that from the date

the petitioner died, the amount of compensation deposited by the applicant be ordered to be refunded.

5. Mr. D.A. Dubey, counsel for respondents fairly agreed that the applicant Mrs. Sajani Sujan Ajwani shall be permitted to remove the articles and belongings of the deceased petitioner from the subject flat and that the amount of compensation deposited by the applicant from 1st August, 2004 until the month of March, 2005 shall be refunded. We accept the statement of the counsel for respondents.

6. Resultantly, we dispose of the Writ Petition and the aforesaid two Civil Applications by the following order:

O R D E R :

(i) Writ Petition is dismissed as abated.

(ii) The respondents are directed to remove the lock put up by them on the flat 31-32, Dena Bank Building, Colaba, Mumbai, on 21st

June, 2006 to enable the applicant Mrs. Sajani Sujan Ajwani to remove the articles and belongings of the deceased petitioner from the subject flat.

(iii) After the articles and belongings of the deceased petitioner are removed by applicant Mrs. Sajani Sujan Ajwani, the said flat shall come into possession of the respondents and they shall be free to deal with the said flat in the manner they like.

(iv) The respondents shall also refund the amount of compensation deposited by the applicant Mrs. Sajani Sujan Ajwani for the period from 1st August, 2004 to the month of March, 2005 on 21st June, 2006 at the time the applicant comes to remove the articles and the belongings of the deceased petitioner.

(v) It is clarified that the applicant Mrs. Sajani Sujan Ajwani has no right of any

nature whatsoever to claim possession or occupation of the subject flat and in case she does not remove the belongings and articles of the deceased petitioner on 21st June, 2006 the respondents shall be at liberty to remove the said articles from the said flat at the cost of the applicant, after preparing necessary Inventory.

7. The Writ Petition as well as both the Civil Applications stand disposed of.

Sd/-
[R.M. LODHA, J.]

Sd/-
[A.S. BAGGA, J.]